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May 6

Honorable Harry H. Foote
Chairman, Committee on Liquor Laws
House of Representatives
Concord, New Hampshire

Dear Mr. Foote:

In reply to your letter of April 29, inquiring concerning proposed amendment to section 1 of House Bill No. 105, to permit licenses to first-class restaurants to serve wine and liquor, you are respectfully advised that it is my opinion that the proposed amendment as presently written is not unconstitutional.

Substantially similar legislation has been in existence in New Hampshire for nearly twenty years in the form of fees for hotel licenses, as set forth in Revised Laws of New Hampshire (1942), chapter 170, section 21. This section has remained intact and unchallenged either by court or adversary process over this period of time. Furthermore, it is noted that the language proposed does not involve an attempted delegation of legislative power, with insufficient standard, as in Ferretti v. Jackson, 88 N.H. 296 (1936), but contains maximum and minimum limitations in amount for license fees, together with reference to the basis upon which the Commission shall establish same, to wit, volume or probable volume of business of individual licensees.

There is room for considerable divergency of opinion in the field of comparison between license fee and tax, as indicated in Opinion of the Justices, 88 N.H. 497 (1937). It is not believed that license fees established by this section would so exceed the probable expense of issuing licenses and inspecting and regulating the restaurants licensed as to cause judicial reviewing authority to conclude that the purpose of the section is an unconstitutional occupation tax, rather than a license fee. Cf., Havens v. Attorney-General, 91 N.H. 115, 120 (1940); Opinion of the Justices, 94 N.H. 506, 509 (1947). Nor do I believe the language proposed prescribes